

Gregory A. Blue
95 E Cliff House Dr. #A
Camp Verde, AZ 86322
(928) 567-5683
In Pro Per

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2007 OCT 16 AM 8:03

✓ JEANNE HICKS, CLERK

BY: STACIE POOLE

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

GEORGE W. HANCE, et al.,)	No. 4772
)	
Plaintiffs,)	Division 1 ✓
vs.)	
)	
WALES ARNOLD, et us., et al.,)	
)	
Defendants,)	RE: MOTION FOR AN
_____)	ORDER TO SHOW CAUSE
)	
GREGORY A BLUE,)	
)	
Petitioner,)	
vs.)	
)	
THE VERDE DITCH COMPANY)	
)	
Respondent,)	
_____)	

In the matter of **THE VERDE DITCH COMPANY**, civil case number 4772,
Petitioner, **GREGORY A. BLUE**, In Pro-Per, for my Motion for an Order to Show Cause
say:

1. The court to determine responsibility of the Respondent and to establish appropriate and/or corrective measures to eliminate the risk of the health and welfare of the public for the development of parcels 404-30-108 through 404-30-114A (320 feet) in Camp Verde, Arizona.

2. In a letter dated, September 19, 2007 (exhibit a), the Respondent stated in the last paragraph that "the potential risk to the health and welfare of the public that will soon be occupying your buildings is real and should be addressed".

3. Petitioners repeated offers to pay for one-third (1/3) of the cost to line the ditch (both sides and bottom) or preferably place piping for the development of parcels 404-30-108 through 404-30-114A (320 feet) in Camp Verde, Arizona to eliminate the risk of the health and welfare of the public have been denied.

4. Accusations made by the Respondent are red herrings and an attempt for the Respondent to not accept responsibility for the maintenance and repair of the ditch.

5. Letter from Arizona Department of Water Resources has stated that the embankment for the verde ditch does represent a potential risk to property if it were to fail and made recommendations to be addressed (exhibit b)

6. Applicable case law indicates that a ditch company may be held liable for leaks caused by a breached ditch. *Salt River Valley Water User's Ass'n v. Stewart & Howell v. Big Horn Colonization Co.* (exhibit c)

7. Applicable case law indicates that once a risk is perceived and ignored, the duty of care is to protect against foreseeable risks. *Warrington v. Tempe Elementary School District No. 3* (exhibit c)

8. Respondent is in a position of acknowledging a risk of overflow, knowingly rejecting an offer to cooperate and doing nothing to prevent risk.

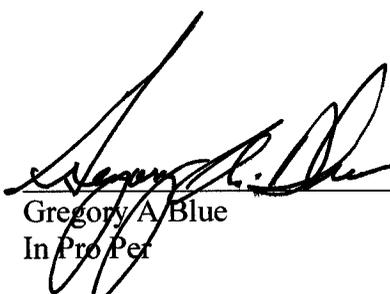
9. According to Rick Feldman, Chief Building Inspector for the Town of Camp Verde has stated that the Petitioner is in compliance and meets all of the town's set back requirements. (exhibit d, page 2)

WHEREFORE, Petitioner respectfully requests:

1. that the Court issue an Order directing respondent to show cause as to why it should not take the corrective measures to eliminate of their acknowledged risk to the health and safety of the public by either lining the sides and bottom or placing the appropriate culvert/piping in the verde ditch.
2. that the Master of the Ditch has the authority to direct the respondent to increase the fees they collect from the shareholders to cover the remaining 2/3 expense of eliminating the identified risk to the health and safety of the public either lining the sides and bottom or placing the appropriate culvert/piping in the verde ditch.

DATED this 15 day of OCTOBER, 2007

By:


Gregory A. Blue
In Pro Per

THE VERDE DITCH

September 19, 2007

RE: The Development of parcels 404-30-108, 404-30-109, 404-30-110, 404-30-111, 404-30-112, 404-30-113 in Camp Verde, Arizona

Mr. Greg Blue,

We are in receipt of the letter from the Arizona Department of Water Resources, that calls out an A.R.S. 45-1201. This statute concerns **Dams** located within the state of Arizona and states that a dam by definition is any artificial barrier, including appurtenant works for the impounding or diversion of water being twenty-five feet or more in height. This statute does not in any way apply to the Verde Ditch.

We fail to see the relevance that this statute may have to the problem and the potential risk to the public health and welfare that exists because you have elected to place your buildings against the bank of the Verde Ditch.

The existence of the Verde Ditch as it runs through your property is a pre-existing condition that should have been addressed through engineering; You simply do not build next to an existing rail road tract [for example] and then ask the railroad to move the tracts, nor do you ask them to build you a screen wall at their expense so that trains will not disrupt your development. Even if you are willing to pay 1/3 of the cost, that is just not going to happen. You Mr. Blue are responsible to address any pre-existing conditions that may affect your development.

Your decisions to design and place the buildings on a commercial property right against the bank of the Verde Ditch, without making any provisions through engineering to protect the buildings and the public from the water that may possibly escape from the ditch, was short sighted and is irresponsible.

Any developer or contractor who elects to design and build a commercial project on his own, without a grading plan and/or without seeking the advice of a professional engineer, must then assume responsibility for that project himself.

We as the Commissioners of the Verde Ditch will continue to conduct routine maintenance along the length of the Verde Ditch.

****** We as the Commissioners of the Verde Ditch can not and will not ask the share holders of the Verde Ditch to contribute financially to the development of your project. That responsibility is solely your own.

While the Commissioners of the Verde Ditch sympathize and understand your problems, You Mr Blue you have elected to contribute significantly to your problems. You have cut away a portion of the bank that retain the water within in the ditch; This has compromised the strength of our ditch bank. Also you have pull out trees along the ditch bank this has created voids in the ditch bank and caused the ditch to leak. You have placed your buildings to close the property line and to close the Verde Ditch. Your buildings are inside of the required building set back lines; Which should be 33.0 feet from the property lines. All of which as stated above contribute significantly to your problems.

The potential risk to the health and welfare of the public that will soon be occupying your buildings, is real and should be addressed. The Verde Ditch neither accepts nor assumes any responsibility for the safety of the public due to your development.

Sincerely, The Commissioners for and of the Verde Ditch



**ARIZONA DEPARTMENT OF WATER RESOURCES
OFFICE OF WATER ENGINEERING**

Dam Safety Section

3550 North Central Avenue, Phoenix, Arizona 85012
Telephone 602-771-8649
FAX 602-771-8686



Janet Napolitano
Governor

Herbert R. Guenther
Director

July 30, 2007

Mr. Chuck Mayberry, Attorney
Verde Ditch Company
P.O. Box 2345
Camp Verde, Arizona 86322

**RE: Verde Ditch Embankment
Non-Jurisdictional Determination
July 24, 2007 Investigation**

Dear Mr. Mayberry:

This letter is in response to a public complaint from a resident in Camp Verde. The Arizona Department of Water Resources (Department) was contacted with concern about the potential for failure of the Verde Ditch embankment located immediately behind several private homes. The Department investigated the structure on July 24, 2007. During the investigation it was determined that the embankment does not meet the requirements for state jurisdiction listed in A.R.S. § 45-1201.

Although the embankment for the Verde Ditch is a non-jurisdictional structure, it does represent a potential risk to property if it were to fail during a major flood event. Our inspector noted several operation and maintenance items which I recommend be addressed in order to increase the effectiveness of the ditch and reduce the potential for failure of the embankment. These recommendations are presented as a courtesy to the owners of the ditch.

- Deep-rooted vegetation was observed throughout the length of the ditch and embankment and should be removed.
- Sections of sloughing of the embankment slopes were observed. The crest of the ditch should be widened in these areas.
- Erosion of the upstream and downstream slopes of the embankment was observed and should be repaired.
- Sections of the concrete lining were observed to be heavily eroded. The liner should be repaired in these areas.
- Sections of the ditch were observed to be unlined. The ditch should be lined in these areas.
- Evidence of uncontrolled seepage exiting the downstream slope and toe of the embankment was observed in at least one location on the north side of the embankment. This area should be closely monitored for seepage.

If you have any questions concerning this letter, please contact Craig Brown at (602) 771-8653.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Johnson".

Michael Johnson, Ph.D., P.E.
Section Manager

cc: Mr. Greg Blue, Camp Verde Arizona
Mr. Ron Long, Public Works Engineer - Town of Camp Verde

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LAW OFFICES

William J. Sims III

Telephone: 602-604-2120
Facsimile: 602-274-9135
Email: wjsims@lawms.com

August 23, 2007

L. Richard Mabery
234 North Montezuma Street
Prescott, Arizona 86301

Re: Verde Ditch

Dear Mr. Mabery:

I represent the Town of Camp Verde and write to you concerning Verde Ditch. Possible past and potential future breaches of the ditch have come to our attention. Such breaches create a risk of damage from leakage onto the adjoining property, Fort Verde Caves subdivision, parcels 404-30-108 through 404-30-114A.

It appears the Commissioners of Verde Ditch are aware of problems with the construction and condition of the ditch and have taken no action. Mr. Gregory Blue, of Fort Verde Caves subdivision, met with the Commissioners and requested that Verde Ditch take remedial measures such as lining the ditch to prevent breach. Additionally, the Arizona Department of Water Resources ("ADWR") issued a non-jurisdictional determination that the ditch embankment does represent a potential risk to property if it were to fail during a major flood event. The Department recommended Verde Ditch take the following actions:

- Remove deep-rooted vegetation throughout the length of the ditch and embankment;
- Widen the crest of the ditch in certain areas;
- Repair erosion of upstream and downstream slopes of the embankment;
- Repair sections of eroded concrete lining;
- Line unlined areas; and
- Closely monitor areas of uncontrolled seepage exiting the downstream slope and the toe of the embankment on the north side of the embankment.

The Commissioners responded to a letter from ADWR concerning Verde Ditch with a letter directed to Mr. Blue, acknowledging the risk to public health and safety yet denying responsibility for any such risk and refusing to contribute financially to remediation efforts.

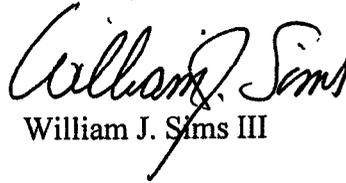
Contrary to the Verde Ditch Commissioners' assertions, applicable case law indicates that a ditch company may be held liable for leaks caused by a breached ditch. The Arizona Supreme Court has observed that "[t]he owner of an irrigating ditch or canal, being bound to exercise reasonable care and prudence in the construction and management of the same, is ordinarily liable in damages for injuries resulting from the breaking, leakage, or overflow of such canal or ditch when caused by the want of the required care." *Salt River Valley Water User's Ass'n v. Stewart*, 44 Ariz. 119, 122, 34 P.2d 400, 401 (1934). Other courts have recognized the same rule. In 1905, the Wyoming Supreme Court acknowledged that "The well-settled rule is

that the owner of an irrigating ditch is bound to exercise reasonable care and skill to prevent injury to other persons from such ditch, and he will be liable for all damages occurring to others as a result of his negligence or unskillfulness in constructing, maintaining, or operating the ditch." *Howell v. Big Horn Colonization Co.*, 14 Wyo. 14, 81 P. 785, 790 (1905). In 1933, a California court of appeals stated that "The ordinary rule is that an irrigation district is bound to exercise reasonable care in the construction and maintenance of its ditches and canals, and when property is injured by seepage or flooding due to faulty construction or negligent maintenance of an irrigation ditch or canal, the irrigation district is liable for the resulting damage." *Ketcham et. al. v. Modesto Irr. Dist. et. al.*, 135 Cal.App. 180, 186, 26 P.2d 876, 878 (1933).

Verde Ditch is now in a position of acknowledging a risk of overflow, knowingly rejecting an offer to cooperate with landowners to take steps to prevent that overflow, and doing nothing to prevent the known risk. Once a risk is perceived and ignored, the duty of care is to protect against foreseeable risks. *Warrington v. Tempe Elementary School District No. 3*, 197 Ariz. 68, 3 P.3d 988 (App. 1999) (School District proximately caused injuries to child running in the street because it knew of complaints about the placement of the bus stop, could have placed it in a safer location, and chose not to; the precise nature of the accident need not be foreseeable, only the general character of the event of harm). In sum, Verde Ditch may be exposed to substantial liability, and in any subsequent lawsuit would likely bear the lion's share of comparative fault.

The development of the Fort Verde Caves subdivision has been in accordance with Town requirements. The Town has issued building permits, yet to be completed, for the Fort Verde Caves subdivision, built in the shadow of the Verde Ditch, and is therefore concerned about possible risks to the health and safety of property owners. The Town stands ready to facilitate a workable solution to this problem. Further, Mr. Blue has offered to contribute to remediation efforts. Please feel free to contact me if you have any questions as well as to set a time for a meeting of the parties to this matter.

Sincerely,



William J. Sims III

cc: Dave Smith
Nancy Buckel
Gregory Blue



The BUGLE

The Camp Verde Bugle - serving Camp Verde, Arizona

Monday, August 13, 2007

Ditched

Lack of authority gives developer the blues

By Steve Ayers
Staff Reporter

Monday, August 13, 2007



Just how autonomous are irrigation ditch companies?

According to Camp Verde developer Greg Blue, they appear to be on a level of sovereignty equal to the Indian nations or the federal government.

Blue is building a cluster of duplex houses on Cliff House Drive. The Verde Ditch runs immediately behind and adjacent to the homes

Steve Ayers/VVN
Camp Verde
Developer Greg Blue's
concerns over a
leaking irrigation ditch
have uncovered the
fact that no one, not
the town nor the state,
has jurisdiction over
the actions or lack of
action of an irrigation
district.

The ditch is elevated some 12 feet above the ground. It is approximately four feet wide and four feet deep and full of water most of the time.

And it leaks.

Those leaks have Blue concerned that the ditch bank may fail, and risk flooding his property.

For the last few months, as he has continued to work on his duplexes, Blue has been trying to get the problem solved. He wants the Verde Ditch Company to line the ditch, or at the very least shore it up so it does not fail.

He has taken his case to the Verde Ditch commissioner, John Reddell. He has taken it to the Verde Ditch board of directors. He has pled his case to the Town of Camp Verde. Recently, he complained to the Arizona Department of Water Resources.



There is only one thing Blue now knows for sure -- there is no one with regulatory control or authority of irrigation ditch companies and their ditches.

"The best I can tell, they are just expected to do the right thing," Blue said.

The State

ADWR sent an inspector to Blue's property on July 24. The inspector's report, released July 30, revealed two issues.

First there is a "potential risk" to Blue's property, among others, if the ditch bank fails.

The report from ADWR listed problems with "deep rooted vegetation" that should be removed, "sloughing" of the ditch bank, erosion of the up and down stream slopes, erosion around existing concrete structures and evidence

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of seepage on the slope facing Blues development.

The report suggests controlling the weeds, lining the ditch internally, widening the crest of the ditch, repairing the erosion damage and monitoring the seepage problem.

The second revelation, and the most disturbing to Blue, is that the ditch bank does not constitute a "jurisdictional" structure, therefore ADWR has no authority to demand it be fixed.

The Verde Ditch

According to Reddell, the problems all started when Blue removed material from the base of the embankment. He doesn't deny there is a problem that needs to be fixed.

"He's the one who has caused us the problem," Reddell said. "Our problem is him. He never got an engineer. The ditch had never failed until he got in there and started doing something to it."

Blue denies he has ever cut any material from the ditch bank. And according to Community Development Director Nancy Buckel, there is no evidence he has.

"As I understand it, there has been no cutting of the ditch bank," said Buckel. "He has just built his buildings on existing pads."

The Verde Ditch Company has done some repairs since Blue started complaining, but according to Blue they are just patches and do little to alleviate the long-term risks.

The Town

According to Rick Feldmann, chief building inspector for Camp Verde, Blue's project meets all of the town's setback requirements.

"All we have done is verify the setbacks and that his application for permits was all in order," Feldmann said. "He is in compliance. Our building codes do not give us any authority in dealing with ditches."

Buckel said she realizes that the encroachment of the community on the ditches is a problem.

"Irrigation ditches are a whole different kind of critter," Buckel said. "Most of them were here before the community was here. They are grandfathered. And they are high profile."

Buckel said she sees the need for the Verde Valley ditch companies to address urbanization the same way it has been done in Phoenix.

"They need to protect their assets by lining them or running them through underground pipes," she said, "They tend to feel that if anything happens it is the fault of development. And with the lack of any rules or regulations, common sense prevails. Hopefully."

Buckel notes that there have already been instances where ditches have been responsible for carrying floodwaters into the community.

The Blues

For all the concern and understanding he has and hasn't received, Blue still remains frustrated with a lack of answers and actions.

"Why do we have to have catastrophes before action is taken," Blue said. "Yes the ditch is going to fail, and yes it is going to impact the health and safety of people and property. We know the potential exists. Why can't we do anything about it? And who's going to assume the liability?"

The problems between Blue and the Verde Ditch may boil down to who will pay for any improvements.

Blue said he has offered to help financially, but he is not financially responsible for making the entire ditch bank safe.

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According to Reddell, the Verde Ditch has composed, but has yet to send, a letter to ADWR responding to their inspection. He would not divulge the contents of the letter.

Town Attorney Bill Sims has received permission to intervene on the town's behalf and has offered, if all parties agree, to arbitrate the problem.

And as the sword of Damocles in the form of several thousands of gallons of Verde River water, hangs over his head, Blue waits.

Related Links

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

In re the:)
Motion for an Order to Show Cause)
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GEORGE W. HANCE, et al.,)
Plaintiffs,)
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WALES ARNOLD, et us., et al.,)
Defendant)
_____)
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GERGORY A. BLUE,)
Petitioner,)
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vs.)
))
THE VERDE DITCH COMPANY)
Respondent,)
_____)

No. 4772

NOTICE OF HEARING
MOTION FOR AN
ORDER TO SHOW CAUSE

Pursuant to request of the Petitioner,

IT IS ORDERED setting a hearing on this matter for:

Date: _____ Time: _____ am/pm

Div. _____ Honorable _____

[] Yavapai County Courthouse
Prescott, AZ

[] Verde Valley Judicial District
3505 W. Hwy 260
Camp Verde, AZ